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landlord to restore the radiators or to install larger ones of a different variety. Tenant's family became ill and were compelled to move to a hotel, leaving their goods in the apartment. Rent was paid for the following month but thereafter was not paid, and the landlord sued. *Held*, the landlord's failure to provide sufficient heat was not a constructive eviction. *Merida Realty Co. v. Coffin* (1910), 123 N. Y. Supp. 120.

Ordinarily, failure of landlord to supply heat would be a constructive eviction, if tenant promptly abandons the premises. *Jackson v. Paterno*, 58 Misc. 201, 108 N. Y. Supp. 1073; *Lawrence v. Burrell*, 17 Abb. N. C. 312. But if tenant obstructs prompt action on the part of the landlord, a different rule governs. The landlord has a right to a reasonable opportunity to rectify the defect, and in case of compliance with notice, no eviction can be predicated upon the temporary inconvenience of the tenant. *O'Gorman v. Harby*, 18 Misc. 228, 41 N. Y. Supp. 521. In the principal case failure of tenant to remove goods at once, and payment of rent for the subsequent month, combined with his action in refusing landlord permission to repair to overcome defense of constructive eviction.

MUNICIPAL CORPORATIONS—NUISANCES—BILLIARD HALLS AND POOLROOMS.—The town of Eldorado, Oklahoma, acting under the authority of § 847 of Snyder's Comp. Laws 1909 which provides that the boards of trustees of incorporated towns and villages shall have the following powers, namely: "(4) to declare what shall constitute a nuisance and to prevent, abate and remove the same," passed an ordinance which in substance declared that all billiard and poolrooms shall be deemed a nuisance and making it punishable by a fine of twenty-five dollars, etc., etc., for any person, either as owner, servant, or employee to open, establish or carry on the same within the corporate limits of the town. This ordinance became effective on Jan. 1, 1910. On Jan. 25, 1910, the petitioner, W. C. Jones, was convicted before the town justice of Eldorado of violating said ordinance by running a poolroom for hire in said town and sentenced to pay a fine of \$25 and costs, failing to pay which he was committed to the town jail of Eldorado. He contended his imprisonment was illegal on two grounds, the first of which was that the ordinance in question was void for want of power in the trustees to enact the same. *Held*, the ordinance is valid and within the power of the town of Eldorado as conferred by the aforesaid section and moreover the enforcement of such ordinance infringes no constitutional right of plaintiff. *Ex parte Jones* (1910), — Okl. —, 109 Pac. 570.

In doubtful cases where a thing may or may not be a nuisance, depending on a variety of circumstances requiring judgment and discretion on the part of the town authorities in exercising their legislative functions, under a general delegation of power like the one in the principal case, the action of the town officials under such circumstances would be conclusive on the courts. This doctrine is set forth and followed in these cases: *North Chi. City R. R. Co. v. Town of Lake View*, 105 Ill. 207, 44 Am. Rep. 788; *Harrison et al. v. City of Lewiston*, 153 Ill. 313, 38 N. E. 628, 46 Am. St. Rep. 893; *Kansas City v. McAleer*, 31 Mo. App. 433; *Glucose Refining Co. v. City of*

Chicago, (C. C.) 138 Fed. 209; *Slaughter-House Cases*, 16 Wall. 36. Courts however have decided that a municipal ordinance is unreasonable in view of the conditions in the municipality and declared the ordinance void. *Crawford v. City of Topeka*, 51 Kan. 756, 33 Pac. 476, 37 Am. St. Rep. 323, 20 L. R. A. 692. That a court has the power to decide as to the question of the reasonableness of a municipal ordinance regulating a condition that is not a nuisance per se or was not so at common law, see *State v. Dubarry*, 46 La. Ann. 33, 14 South. 298; *State v. Stone*, 46 La. Ann. 147, 15 South. 11. There are numerous cases holding that billiard halls and poolrooms are not nuisances per se. The principal case must not be understood as being in conflict with these cases since it merely upholds that billiard halls and poolrooms may, because of certain conditions, because of the peculiarity of their surroundings, become nuisances and as such are subject to absolute control by the municipality in the exercise of its police power.

MUNICIPAL CORPORATIONS—POLICE POWER—EMINENT DOMAIN.—The city of Aberdeen, Wash., acting under the authorization of Laws 1909, c. 147, entitled "an act empowering cities * * * to fill low lands within their borders and for that purpose to exercise the right of eminent domain for the taking and damaging of property, and providing a method for making compensation therefor, and providing for levying and collecting of special assessments on the property thereby benefited * * *," commenced filling in property of plaintiff, this property being situated in a low, swampy, district and shown to be a menace to public health. This suit is brought by the plaintiff to enjoin the prosecution of the work by the city on the ground that the city is encroaching on plaintiff's constitutional rights in that it has given him no opportunity of being heard by means of eminent domain proceedings and also that the prosecution of this work under the police power privilege is an unwarranted invasion of plaintiff's constitutional rights. *Held*, (FULLERTON, J. dissenting), the city may under the police power as enabled by the foregoing statute fill in low lands where these lands are unimproved without the exercise of eminent domain proceedings and assess the cost thereof against the landowner. *Bowes et ux v. City of Aberdeen et al.* (1910), — Wash. —, 109 Pac. 369.

The legislature may assert its police power to make an improvement common to all concerned, at the common expense of all, and the improvement need not be carried out under the law of eminent domain. This view is sanctioned by a very respectable line of decisions: *Charleston v. Werner*, 38 S. C. 488, 17 S. E. 33, 37 Am. St. Rep. 776; *Rochester v. Simpson*, 134 N. Y. 414, 31 N. E. 871 (both decided in 1892); *Nickerson v. Boston*, 131 Mass. 306; *Chicago & N. W. Ry. Co. v. City of Chicago*, 140 Ill. 309, 29 N. E. 1109; *State v. Schlemmer*, 42 La. Ann. 1166, 8 South. 307, 10 L. R. A. 135; *Baker v. City of Boston*, 29 Mass. (12 Pick.) 184, 22 Am. Dec. 421 (1831); *Slaughter-House Cases*, 16 Wall. 36; *City of Rochester v. West*, 164 N. Y. 510. There is authority to the contrary however, a number of cases holding that a municipality in the exercise of its delegated police power can only go to the extent of abating or removing a nuisance and cannot under the guise